

### 305.303

notice shall not be used solely to determine the size classification of respondents for a proposed R & D acquisition. In such instances, a “Small Business Sources Sought” notice may be used (*see 319.202-2*), in lieu of the procedures in this section.

(3) OPDIVs shall follow the standard HHS instructions for completing an R & D Sources Sought notice. The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice, accessible on the FedBizOpps “Notices” page at: <http://www.fedbizopps.gov>. Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

(4) In instances where a sufficient number of sources has not been identified to compete for a non-R & D project, an OPDIV may use the procedures specified in *310.001*, including the issuance of a “Sources Sought” notice, as appropriate, in lieu of the procedures in this section.

### Subpart 305.3—Synopsis of Contract Awards

#### 305.303 Announcement of contract awards.

(a) *Public Announcement.* The Contracting Officer shall report awards over \$3.5 million, not otherwise exempt under FAR 5.303, to the Office of the Assistant Secretary for Legislation (OASL) (Congressional Liaison). The Contracting Officer shall e-mail a copy of the contract or award document face page to [grantfax@hhs.gov](mailto:grantfax@hhs.gov) prior to the day of award or in sufficient time to allow OASL to make an announcement

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by 5 p.m. Washington, DC time on the day of award.

[75 FR 21510, Apr. 26, 2010]

### Subpart 305.5—Paid Advertisements

#### 305.502 Authority.

The Contracting Officer may advertise or place notices in newspapers and periodicals to announce that the contracting office is seeking proposals, quotations, or bids, as appropriate.

### PART 306—COMPETITION REQUIREMENTS

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306.501 Requirement.

306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

#### Subpart 306.2—Full and Open Competition After Exclusion of Sources

#### 306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in *FAR 6.202 (a)* shall mean the appropriate Competition Advocate (CA) cited in *306.501*.

(b)(1) The Contracting Officer shall prepare the required determination and

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findings (D & F) based on the data provided by program personnel. The appropriate CA (non-delegable) shall sign the D & F.

### Subpart 306.3—Other Than Full and Open Competition

#### 306.302 Circumstances permitting other than full and open competition.

##### 306.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(iv) Follow-on contracts for the continuation of R & D studies on long-term social and health programs, research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling HHS' or the OPDIV's requirements.

(b) *Application.*

(5) when the head of the sponsoring program office has determined that the activity must acquire only specified makes or models of technical equipment or parts to meet the activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (NOTE: This criterion is limited to testing and evaluation purposes only and not for initial outfitting or repetitive acquisitions. Project Officers shall support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

##### 306.302-7 Public interest.

(a) *Authority.*

(2) Agency head, in this instance, means the Secretary.

(c) *Limitations.* The Contracting Officer shall prepare a written request for approval and provide it through appropriate acquisition channels, including the HCA and Associate DAS for Acquisition, to the Secretary. The request shall include a D & F for the Secretary's signature that contains all pertinent information to support the justification for exercising the exemption to competition and a letter for the Secretary's signature notifying Congress of the determination to award a

contract under the authority of 41 U.S.C. 253(c)(7).

#### 306.303 Justifications.

##### 306.303-1 Requirements.

(b) The responsible Program Office must provide a written justification whenever it requests that goods or services be acquired without obtaining full and open competition. The justification must be submitted with the AP or other acquisition request document—see Subpart 307.71. The Project Officer has responsibility for preparing the justification with assistance, as necessary, from the Contracting Officer.

(1) Justifications for acquisitions at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for acquisitions in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and titled "Justification for Other Than Full and Open Competition" (JOFOC). HHS requires use of a standard format for a JOFOC. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the JOFOC template in accordance with OPDIV procedures.

(2) Regardless of the dollar amount of the acquisition, justifications shall—

(i) Fully describe what is to be acquired;

(ii) Provide a specific explanation of why it is not feasible to obtain full and open competition;

(iii) Be supported by verifiable facts, rather than untested or unsubstantiated opinions or conclusions; and

(iv) Be written in a manner to permit an individual without technical knowledge of the requirement to understand the supporting rationale.

(3) Preliminary arrangements with, or verbal or written commitments to, a proposed sole-source contractor shall be avoided given the statutory requirement to obtain full and open competition to the maximum extent practicable.

(4) Justifications for orders to be placed under FSS contracts that limit consideration of contractors shall comply with *FAR 8.405–6* and *308.405–6*.

### 306.304 Approval of the justification.

*Certification, concurrence, and approval requirements.* The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, and the Contracting Officer shall certify that the justification is accurate and complete by signing the JOFOC. For acquisitions in the dollar amount cited in *FAR 6.304(a)(2) through (a)(4)*, the CCO, if applicable, and the HCA shall indicate their review of, and concurrence with, the justification by signing the JOFOC.

(a) The approving officials for JOFOCs are as follows:

(1) The Contracting Officer shall exercise this approval authority unless a higher approval level is required by OPDIV procedures.

(2) The CAs are listed in *306.501*. This approval authority is not delegable.

(3) The CA shall exercise this approval authority, except where the individual designated as the CA does not meet the requirements of *FAR 6.304(a)(3)(ii)*. This approval authority is not delegable.

(4) HHS' SPE is the Associate DAS for Acquisition.

(c) A class justification shall be processed in the same manner as an individual justification. A class justification may consist of contracts/orders for the same or related supplies and services or other contract/order actions that require essentially identical justifications.

## Subpart 306.5—Competition Advocates

### 306.501 Requirement.

The HHS CA is the Director, Strategic Acquisition Service, PSC. The CAs for each of HHS' contracting activities are as follows:

AHRQ: Director, Office of Performance Accountability, Resources and Technology  
 ASPR/OAMCG: Chief of Acquisition Policy  
 CDC: Chief Information Officer  
 CMS: Chief Operating Officer  
 FDA: Deputy Commissioner for Administration

HRSA: Associate Administrator, Office of Operations

IHS: Director, Office of Management Services

NIH: Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (other than R&D)

PSC: Director, Strategic Acquisition Service

SAMHSA: Executive Officer

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21510, Apr. 26, 2010]

### 306.502 Duties and responsibilities.

(a) Each OPDIV CA shall prepare an annual Competition Advocate Report (CAR), covering the prior fiscal year, in accordance with the requirements of *FAR 6.502(b)(2)* and *306.502(b)*, and provide it to the HHS CA not later than November 16 of each year or the next business day, if the due date falls on a non-business day. NIH's two CAs shall prepare and sign a joint report covering their respective areas of responsibility.

(b) HHS requires that each CAR be prepared in a standard format. The template for the report is available on the ASFR/OGAPA/DA Internet Web site. As long as the standard headings are included and required information is addressed, the OPDIV may include additional information in accordance with OPDIV procedures.

(1) The CAR shall be based on information and data for all acquisitions that exceed the micro-purchase threshold for the applicable fiscal year, unless otherwise noted in the standard format.

(2) Each OPDIV CA shall obtain the information and data needed for preparation of the CAR from the responsible HCA and/or the CCO, as appropriate, who shall assist the CA in preparing the CAR.

(3) Prior to forwarding the CAR to the HHS CA, each OPDIV CA shall provide the CAR to the responsible HCA, who shall review and approve it for accuracy and completeness.

(c) The HHS CA shall consolidate all OPDIV CARs and provide an HHS-wide CAR that addresses all requirements of *FAR 6.502(b)* to the HHS SPE and the CAO by December 20 of each year or the next business day, if the due date falls on a non-business day.